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NO. 83-2012

Supreme Court, U.S.

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1983

THOMAS G. HEYWARD,

PETITIONER,

VS.

UNITED STATES OF AMERICA,

RESPONDENT.

REPLY TO MEMORANDUM FOR THE
UNITED STATES IN OPPOSITION

THOMAS ENGLISH McCUTCHEN, JR.
Post Office Drawer 11268
Columbia, South Carolina 29211
(803) 799-9791
COUNSEL OF RECORD

HERBERT W. HAMILTON
EVANS TAYLOR BARNETTE
Post Office Drawer 11268
Columbia, South Carolina 29211

Argument

The Petitioner files this Reply as permitted by the Rule 22.5 of the Supreme Court Rules. The Petitioner submits that the Respondent in the Memorandum in Opposition has simply parroted the wording of the Circuit Court.

The Respondent argues that introduction of evidence concerning discovery of the marijuana laden airplane was simply culmination of evidence which showed the Petitioner's involvement in drug smuggling. The Respondent states that the Petitioner attempts to explain away the evidence. The recitation in the Petition of the circumstances to which the Circuit Court referred is not submitted to "explain away the evidence" but to show that, viewed independently of the airplane, there were no circumstances which connected the Petitioner directly or



indirectly with criminal activity which could be a likely source of income. Every circumstance was explained. Every circumstance but one (including the discovery of the plane) occurred in a year other than the year of prosecution.

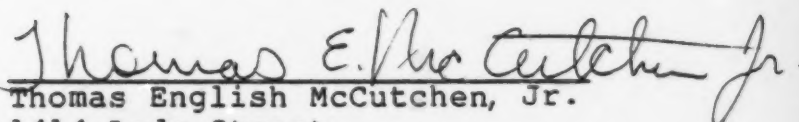
Neither the Circuit Court nor the Respondent in its Memorandum in opposition cites a case in which this Court has allowed the introduction of criminal activity which requires an inference upon an inference to establish a source of income. In United States vs Wright, 667 F2d 793 (CA9, 1982), cited by the Respondent, the checks which were introduced were issued to and endorsed by the accused. There was no need for an inference to connect the accused to the checks.

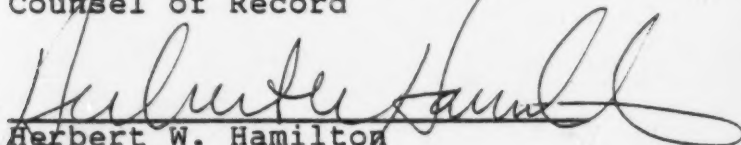
In this case, it is necessary to infer that the Petitioner had knowledge of the cargo of the airplane and then to



infer that this activity also occurred during the year which was the subject of the prosecution. The Petitioner submits the introduction of such tenuous circumstantial evidence violates the protections established by this Court in Holland vs United States, 348 U.S. 121 (1954); United States vs Johnson, 319 U.S. 503 (1943) and United States vs Massei, 355 U.S. 595 (1958).

Respectfully Submitted,


Thomas English McCutchen, Jr.
1414 Lady Street
Columbia, South Carolina
Counsel of Record


Herbert W. Hamilton
Evans Taylor Barnette
1414 Lady Street
Columbia, South Carolina

December 3, 1984